

TREASURY- TAXATION
DIVISION OF TAXATION

Tax Amnesty

Adopted Emergency and Concurrent Proposed New Rules: N.J.A.C. 18:39-1 et seq.

Emergency New Rule Adopted and Concurrent Proposed Rule

Authorized: April 3, 2002 by Robert K. Thompson, Director, Division of Taxation

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): April 8, 2002

Emergency Amendment Filed: April 18, 2002 as R. 2002 d.

Authority: N.J.S.A. 54:50-1 and P.L. 2002, c.6

Calendar References: See Summary Below

Concurrent Proposal Number: PRN 2002-

Emergency Adoption Effective Date: April 18, 2002

Emergency Adoption Expiration Date: June 17, 2002

Submit comments by June 5, 2002 to:

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Chief, Regulatory Services Branch
Division of Taxation
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The agency emergency adoption and concurrent proposal follows:

This is an emergency adoption and concurrent proposal by the Division of Taxation implementing procedures for a State tax amnesty period. This rule is proposed for adoption on an emergency basis and will become effective upon acceptance for filing by the Office of Administrative Law (See N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.5(b)). Concurrently, the provisions of this emergency adoption are proposed for readoption pursuant to the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The rule becomes effective upon acceptance for filing by the Office of Administrative Law (N.J.A.C. 1:30-6.5(d)), if filed on or prior to the emergency expiration date.

Summary

On March 18, 2002, the Governor signed the State Tax Amnesty statute, P.L. 2002, c.6. The Act authorized the Director to establish a period not to exceed sixty days during which taxpayers may pay any eligible State tax which is required to be paid. The Act further provides that the taxpayer will not be subject to any interest, cost of collection, or imposition of any civil or criminal penalties arising out of an unpaid obligation imposed under any eligible State tax law. Specifically, the Act shall apply to state tax liabilities for tax returns due on and after January 1, 1996 and prior to January 1, 2002. Amnesty is not allowable to any taxpayer who at the time of the payment is under criminal investigation or charge for any State tax matter, as certified by a county prosecutor or the Attorney General to the Director. A five percent penalty which shall not be subject to waiver or abatement shall be imposed upon any eligible State tax liabilities not satisfied during the amnesty period.

Emergency adoption is necessary in order to collect up to \$150 million of estimated taxes that have gone unpaid since 1996. Adoption of the proposed rules will enable the Division to discharge its obligation to enforce tax statutes and effect collection and processing of tax payments as quickly and efficiently as possible.

A summary of the agency emergency adopted and concurrent proposed new rules follows:

1. N.J.A.C. 18:39-1.1 establishes the eligibility periods and the beginning and ending dates for the amnesty period. The section also provides examples of when a taxpayer may or may not be eligible for amnesty.

2. N.J.A.C. 18:39-1.2 sets forth the scope of amnesty which permits the waiver of civil and criminal penalties, interest and collection costs upon liabilities for which tax amnesty is granted.

3. N.J.A.C. 18:39-1.3 specifies the methods a taxpayer may use to obtain tax amnesty and where the taxpayer may obtain the required forms. The section details how a taxpayer may participate in tax amnesty if unable to obtain or complete an official tax amnesty form.

4. N.J.A.C. 18:39-1.4 establishes the criteria for the granting or denial of tax amnesty.

5. N.J.A.C. 18:39-1.5 specifies special rules to be applied where a taxpayer is subject to wage garnishment, attachment or seizure of property, a corporation has a voided charter, a taxpayer has requested a conference with the Division, a taxpayer has filed a complaint with the Tax Court, a taxpayer is eligible for partial amnesty, a taxpayer is currently under audit, a taxpayer seeks amnesty for gross income tax liabilities, and a taxpayer has matters pending before the Conference and Appeals Branch.

6. N.J.A.C. 18:39-1.6 sets forth the consequences of denial of tax amnesty specifically where the taxpayer is under criminal investigation or charge as certified by the Attorney General or a county prosecutor.

7. N.J.A.C. 18:39-1.7 establishes the rights of a taxpayer where amnesty has been denied and provides the address of mailing a letter of disagreement.

8. N.J.A.C. 18:39-1.8 sets forth the procedures for reporting an overpayment of tax during the tax amnesty period which may require correction, transfer, or refund.

Pursuant to its authority under N.J.S.A. 52:14B-4(c), the Division of Taxation intends the concurrent proposal to be permanently effective upon the filing of its notice of adoption with the Office of Administrative Law.

Taxpayers wishing additional information about amnesty should call or write to New Jersey Division of Taxation, Amnesty Headquarters, PO Box 445, Trenton, NJ 08646-0445 or 1-800- 781-8407, or inquire on the Internet at <http://www.njtaxamnesty.com>.

The rulemaking is excepted from the calendar reference by N.J.A.C. 1:30-3.3(a)3.

Social Impact

The legislation and the proposed rules are intended to provide a period during which taxpayers, who have failed to pay any eligible State tax payable to or collectible by the Division of Taxation, may remit the tax due and owing. Taxpayers will be excused from any interest or collection costs that may otherwise be due, and from the imposition of any civil or criminal penalties arising out of an obligation imposed under any State tax law. The amnesty statute contains a provision for the imposition of a five percent penalty on Amnesty eligible State taxes not paid during the Amnesty period which shall not be

subject to waiver or abatement. That penalty is in addition to all other penalties, interest, or costs of collection otherwise authorized by law. The new penalty takes effect after the amnesty period expires. The proposed rules provide the general operating guidelines that will be followed by the Division; the requirements which must be met to qualify for tax amnesty; those circumstances that will result in the denial of tax amnesty; and a discussion of a number of specialized situations into which many taxpayers will fall. The amnesty law provides the means by which a taxpayer may come forward and pay existing tax liabilities, both known and unknown to the Division of Taxation without any fear of civil action or criminal prosecution.

Economic Impact

The legislation which these rules implement will increase the tax compliance level of New Jersey taxpayers by providing an incentive for prompt payment. No additional taxes are imposed during the amnesty period. Subsequent to the tax amnesty period, compliance levels should be enhanced by the reduced backlog of non-compliant taxpayers allowing the Division of Taxation to focus on persistent evaders, and the addition of taxpayers to the tax rolls resulting from their identification during the tax amnesty period. This should have a residual positive revenue impact for the State. The proposed rules should also reduce compliance costs for taxpayers interested in availing themselves of the program, by giving them clear guidance as to how to participate in the program.

The State Treasurer has estimated that an amnesty program may result in net tax revenue collections for the General Fund of \$150 million.

Federal Standards Statement

A Federal Standards analysis is not required because the procedures for the tax amnesty are not subject to any Federal regulation and therefore do not exceed Federal requirements and standards.

Jobs Impact

The new rules are not expected to have any effect on jobs in the State.

Agricultural Impact

The Division does not anticipate any agricultural industry impact from the rules proposed for adoption.

Smart Growth Impact

The Division does not anticipate any smart growth impact from the rules proposed for adoption.

Regulatory Flexibility Statement

The primary purpose of the proposed rules is to ease the terms of payment of existing liabilities without any collection costs, civil or criminal penalties, and without any interest. To that end small businesses would be encouraged to pay their outstanding tax liabilities, given the incentives expressed in the legislation. The statute does not provide for differentiation in the treatment of large or small businesses as defined by the pertinent statutes.

The proposed rules do not impose new reporting, recordkeeping or compliance requirements. Because of the simplification of compliance as a result of the terms of amnesty, the small business owner should be encouraged voluntarily to submit taxes due and owing to the State.

Full text of the proposed new rules follows:

CHAPTER 39

TAX AMNESTY

SUBCHAPTER 1. TAX AMNESTY

18:39-1.1 Eligibility for tax amnesty

(a) All eligible taxpayers with an outstanding New Jersey State tax liability reportable on any tax return due on or after January 1, 1996 and prior to January 1, 2002 are eligible for tax amnesty during the “tax amnesty period” designated by the Director of the Division of Taxation.

(b) The designated tax amnesty period will begin Monday, April 15, 2002 and end midnight Monday, June 10, 2002.

Example 1: A taxpayer was issued a Notice of Deficiency in June 2000 for underpayment of corporation business tax for the calendar year 1999. The return was due prior to January 1, 2002. The tax is eligible for remittance under the tax amnesty program, provided the taxpayer pays the amount of tax liability due during the amnesty period and signs the required payment/waiver statement.

Example 2: A taxpayer with a January 31 fiscal year fails to report the gain on the sale of a capital asset that occurred in March 2001. The result of this failure is the underpayment of the taxpayer’s corporation tax liability and imposition of penalty and interest charges for the insufficiency of corporation tax installment payments. Even

though the taxable event occurred prior to January 1, 2002, the return was due after January 1, 2002. Therefore the taxpayer is not eligible to receive amnesty on either the tax liability or the penalty and interest charged for the insufficient installment payment that would be due on the gain from the sale of the capital asset.

Example 3: A vendor sold an automobile in January 2002. She failed to remit the sales tax in February of 2002. She is not eligible for tax amnesty since the due date of the sales tax return occurs after January 1, 2002. The due date of any tax returns must be before January 1, 2002 to be eligible for tax amnesty.

(c) A taxpayer may elect to participate and be granted tax amnesty for any eligible tax which is payable to the Division of Taxation. Taxes not payable to the Division of Taxation, such as, but not necessarily limited to, unemployment and disability taxes (payable to the Department of Labor), boxing taxes (payable to the State Athletic Commission), and local property tax (payable to municipal tax collectors), are not eligible for tax amnesty.

(d) All taxpayers owing State taxes for an eligible period may receive tax amnesty unless taxpayers are under criminal investigation or charge for a State tax matter and that fact has been certified to the Division of Taxation by a county prosecutor or the Attorney General.

(e) Tax amnesty will not be granted with respect to taxes, penalties and/or interest otherwise eligible for tax amnesty that have been paid prior to the commencement of the tax amnesty period.

(f) If a taxpayer has paid a tax in full but still owes penalty and interest on that tax, the outstanding liability for penalty and interest is eligible for tax amnesty.

(g) Tax amnesty will be granted for penalty and interest only if the penalty and interest were assessed with respect to an amnesty eligible liability.

18:39-1.2 Scope of amnesty

(a) When tax amnesty is granted, all collection costs, civil and criminal penalties and all interest attributable to the tax and period for which tax amnesty has been granted will be waived.

(b) Once tax amnesty is granted, all penalties and interest as defined by the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., or any other State tax law and any civil, administrative or criminal proceedings are barred relating to the designated tax only.

(c) If tax amnesty is not granted, the taxpayer's obligation to pay the full amount of the tax due with penalty, interest and cost of collection, if any, will not be waived.

(d) The waivers of interest and penalties and prohibition against prosecution apply only to those amounts of tax for which amnesty is requested and granted.

(e) Penalties and interest will be imposed and proceedings will not be barred relating to any amount of tax later found to be due in excess of the tax amnesty payment.

(f) Once amnesty is granted and the full payment of the tax for which a request for amnesty has been made, the taxpayer relinquishes all rights to refund and of administrative and judicial appeal which have not run or otherwise expired.

18:39-1.3 Application for granting tax amnesty

(a) To obtain tax amnesty, the Division of Taxation must receive from the taxpayer all required forms, and/or tax returns along with the full payment for amnesty eligible taxes. Voice or electronic signatures will be recognized when submitted according to Division procedures.

1. The official forms of the Division of Taxation must be used. These include any forms or returns designed by the Division for use during the amnesty period and any regular New Jersey tax returns being filed under amnesty. Any information submitted for consideration for amnesty not submitted on the required forms will be considered incomplete and amnesty will be denied.

2. Official Tax Amnesty forms are available by writing to: New Jersey Division of Taxation, Amnesty Headquarters, P.O. Box 445, Trenton, NJ 08646-0445 or by calling 1-800-781-8407, or Tax Fax at (609) 826-4500, or inquiry on the Internet at <http://www.njtaxamnesty.com>.

3. The filing must be postmarked by midnight of the last day of the tax amnesty period or delivered to the Division of Taxation by midnight of the last day of the tax amnesty period.

4. Notwithstanding (a)1 above, if the taxpayer electing to participate in tax amnesty is unable to obtain or complete an official tax amnesty form or the necessary tax returns by the last day of the tax amnesty period, the taxpayer may submit a letter which will, for purposes of the filing date, be considered timely filed. That letter must include the following information:

- i. The taxpayer's name;
- ii. The taxpayer's address;
- iii. The taxpayer's ID number, if known, or Social Security number;
- iv. The tax for which tax amnesty is being requested and its amount;
- v. The period for which tax amnesty is being requested; and
- vi. Payment of the tax in full.

5. The letter, in lieu of the submission of appropriate tax amnesty forms and/or tax returns, must be received by midnight of the last day of the tax amnesty period, or postmarked by that date. The tax amnesty election will not be considered complete until all necessary official tax returns have been signed and filed. Thus, the letter is to be used only in such emergencies where tax amnesty forms and/or tax returns cannot be obtained or completed prior to the final day of tax amnesty. The taxpayer must submit the necessary returns within 30 days of the letter's postmark; if not, amnesty will be denied. Taxpayers should keep copies of the applicable forms and/or tax returns and proof of mailing or delivery in order to avoid rejection of the subsequent filing of the tax returns on the grounds that such official filing is not timely.

(b) The taxpayer, in order to be eligible for any tax amnesty, must pay the tax within the period of tax amnesty.

1. If the taxpayer does not know or cannot calculate the tax due, the taxpayer may approximate the amount of this tax liability and send payment for the approximation to the Division within the tax amnesty period. Any subsequent bill to the taxpayer for additional tax due will bear full penalty and interest charges plus an additional five percent penalty which shall not be subject to waiver or abatement. It will not, however, affect the amount on which tax amnesty had previously been granted.

(c) Notwithstanding (a) above, an amnesty application may also be made electronically under the procedures and requirements described at www.njtaxamnesty.com.

18:39-1.4 Granting or denial of tax amnesty

- (a) Tax amnesty will be specifically granted or denied by the Division.
- (b) A taxpayer will be denied tax amnesty if the tax amnesty forms and/or tax returns are not sufficiently complete for the Division to understand the period and tax for which amnesty is applied.
- (c) Tax amnesty will be denied with respect to taxes not eligible for tax amnesty (for example, local property tax).
- (d) A taxpayer will be denied tax amnesty for tax liabilities arising outside of the tax amnesty period in accordance with P.L. 2002, c.6, section 1a.
- (e) A taxpayer will be denied tax amnesty if the taxpayer is certified to be under criminal investigation or charge by the Attorney General or a county prosecutor.
- (f) A taxpayer will be denied tax amnesty for nonpayment or underpayment of tax, payment with a dishonored check or other improper forms of payment established by the Division.
- (g) A taxpayer will be denied tax amnesty for any other acts or failures to act which evidence that the taxpayer is not in compliance with these rules or the enabling legislation.

18:39-1.5 Special rules

(a) A taxpayer who is subject to wage garnishment, attachment, or seizure of property by the Division of Taxation may apply and receive tax amnesty provided the taxpayer complies with the terms of tax amnesty. Upon full payment of all taxes due and the granting of tax amnesty, the Division will apply the payment in satisfaction of the applicable judgments and release any levies against real or personal property.

(b) A corporation that has had its corporate charter voided may be granted tax amnesty providing it complies with the terms of tax amnesty. A corporate charter can only be reinstated upon filing all required returns, full payment of all taxes due, the payment of the reinstatement fee to the Division of Revenue, Business Services Bureau, and approval of the Attorney General. Upon meeting these conditions, tax amnesty will be granted and the corporate charter reinstated.

(c) A taxpayer who has requested a conference with the Division of Taxation may be granted tax amnesty. This can be done provided the taxpayer sets forth the portions of the assessments for which amnesty is sought and withdraws them from the conference process. The portion, if any, on which tax amnesty is not sought nor granted will continue to be the subject of the conference and the 5% penalty in P.L. 2002, c.6, section 1b. shall apply to it.

(d) A taxpayer who has filed a complaint with the New Jersey Tax Court or who is pursuing an appeal before any other judicial tribunal may be considered for tax

amnesty provided the taxpayer agrees to withdraw or otherwise cause the complaint or appeal to be dismissed with prejudice as to the amnesty eligible claims set forth in the complaint. The portion, if any, on which tax amnesty is not sought or granted will continue to be the subject of litigation and the five percent penalty in P.L. 2002, c.6, Section 1b. shall apply to it.

(e) A taxpayer may receive partial tax amnesty on any eligible part of unpaid State tax. The balance of the liability remains subject to penalty and interest at the rates applicable to the pre and post-amnesty periods. Full penalties and interest on the balance of the liability will be imposed by the Director, Division of Taxation.

(f) A taxpayer currently under audit may be granted tax amnesty for any eligible State tax as to any part of an assessment he has agreed to. The taxpayer must however, elect to be considered for tax amnesty for that part of the agreed liability, be eligible to receive it, and have it granted.

(g) A taxpayer seeking amnesty for gross income tax liabilities must pay the liability and, in addition to the election to be considered, must submit a return on the NJ-1040 or any other form acceptable by the Director of the Division of Taxation.

(h) A taxpayer can be denied amnesty for tax matters pending before the Conference and Appeals Branch or for tax matters pending before the Tax Court of New Jersey or other judicial body. Specific approval from the Director must be granted in order to receive amnesty for these situations.

18:39-1.6 Consequences of denial of tax amnesty

(a) A taxpayer denied tax amnesty for a reason other than having been certified as under criminal investigation or charge will have his payments applied to other open tax accounts.

(b) If amnesty is denied because the taxpayer is under criminal investigation or charge as certified by the Attorney General or a county prosecutor, the tax returns and amounts remitted will be returned to the taxpayer and the additional five percent penalty will not be assessed.

18:39-1.7 Rights of taxpayer denied tax amnesty

(a) A taxpayer denied tax amnesty for reasons other than being certified as under criminal investigation or charge can appeal the decision by sending a letter of disagreement within 30 days of the date of the notice denying tax amnesty, stating the basis of the disagreement. If the taxpayer is later found to be eligible for tax amnesty, the taxpayer can pay the applicable tax within 30 days from the date of a favorable decision. In cases where an unfavorable decision denying amnesty is returned in response to a timely filed letter of disagreement, a taxpayer may appeal to the Tax Court of New Jersey, pursuant to the provisions of N.J.S.A. 54:48-1 et seq. within 90 days of the date of the unfavorable decision.

(b) The letter of disagreement should be addressed to:

New Jersey Division of Taxation

Amnesty Review

PO Box 445

Trenton, NJ 08646-0445

18:39-1.8 Overpayment of tax

(a) Amounts submitted in excess of any amounts due are to be credited against open tax accounts for the subject taxpayer when tax amnesty is applied for. A taxpayer can, however, apply for a refund of any penalty and interest paid in excess of the amount required by tax amnesty provided the taxpayer meets the following conditions:

1. The tax liability, penalty, and/or interest was paid during the tax amnesty period; and
2. The taxpayer is determined to be eligible for tax amnesty.

(b) Refunds will not be issued with respect to any eligible State tax liabilities for which tax amnesty has been granted.

1. Consideration will be given to correcting errors made in a tax amnesty payment which occurs during the amnesty period. Appropriate transfers to other tax accounts or refunds may be made during the amnesty period to remedy such errors.
2. After the tax amnesty period, no such corrections, transfers, or refunds will be made. A payment submitted for tax amnesty by a taxpayer is an admission by the taxpayer that he owes the amount of tax for which amnesty is being requested.

3. Refund procedures available for taxes paid under other than tax amnesty conditions are not available for tax amnesty payments.